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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MARK LESLIE, KENNETH E. LONCHAR,
PAUL A. SALLABERRY, MICHAEL M.
CULLY and DOUGLAS S. NEWTON,

Defendants

Civil Action No.

JF

C 07 3444

FINAL JUDGMENT AS TO DEFENDANT DOUGLAS S. NEWTON

J.M.

The Securities and Exchange Commission having filed a Complaint and Defendant Douglas S. Newton having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction, to which Defendant consents); waived findings of fact and conclusions of law; and waived any right to appeal from this Final

Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by knowingly circumventing or knowingly failing to implement a system of internal

1 accounting controls, or knowingly falsifying, or directly or indirectly falsifying or causing to be
2 falsified, any book, record, or account described in Section 13(b)(2) of the Exchange Act [15 U.S.C.
3 § 78m(b)(2)].

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5 **II.**

6 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant
7 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
8 participation with them who receive actual notice of this Final Judgment by personal service or
9 otherwise are permanently restrained and enjoined from violating Exchange Act Rule 13b2-2 [17
10 C.F.R. § 240.13b2-2] by, directly or indirectly, in the capacity of a director or officer of an issuer, (a)
11 making or causing to be made a materially false or misleading statement, or (b) omitting to state, or
12 causing another person to omit to state, any material fact necessary in order to make the statements
13 made, in light of the circumstances under which the statements were made, not misleading to an
14 accountant in connection with (1) any audit, review or examination of the financial statements of the
15 issuer required to be made or (2) the preparation or filing of any document or report required to be
16 filed with the Commission pursuant to the rules promulgated under Section 13 of the Exchange Act
17 or otherwise.

III.

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2 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant
3 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
4 participation with them who receive actual notice of this Final Judgment by personal service or
5 otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section
6 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and
7 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13], by knowingly providing
8 substantial assistance to an issuer that files with the Commission any periodic report or statement
9 pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act rules and
10 regulations, which contains any untrue statement of material fact, or which omits to state a material
11 fact necessary in order to make the statements made, in the light of the circumstances under which
12 they were made, not misleading, or which fails to comply in any material respect with the
13 requirements of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the rules and
14 regulations thereunder.
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IV.

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18 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant
19 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
20 participation with them who receive actual notice of this Final Judgment by personal service or
21 otherwise are permanently restrained and enjoined from aiding and abetting any violation of Sections
22 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A) and (B)] by
23 substantially assisting the failure by any issuer which has a class of securities registered pursuant to
24 Section 12 of the Exchange Act [15 U.S.C. § 78l] or is required to file reports pursuant to Section
25 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] to:
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- 1 (A) make and keep books, records, and accounts, which, in reasonable detail, accurately
2 and fairly reflect the transactions and dispositions of the assets of the issuer; or
3 (B) devise and maintain a system of internal accounting controls sufficient to provide
4 reasonable assurances that (i) transactions are executed in accordance with
5 management's general or specific authorization; (ii) transactions are recorded as
6 necessary (I) to permit preparation of financial statements in conformity with
7 generally accepted accounting principles or any other criteria applicable to such
8 statements, and (II) to maintain accountability for assets; (iii) access to assets is
9 permitted only in accordance with management's general or specific authorization;
10 and (iv) the recorded accountability for assets is compared with the existing assets at
11 reasonable intervals and appropriate action is taken with respect to any differences.
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14 V.

15 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant
16 is liable for disgorgement of \$30,862, representing profits gained as a result of the conduct alleged in
17 the Complaint, together with prejudgment interest thereon in the amount of \$6,401.36, and a civil
18 penalty in the amount of \$25,000 pursuant to Section 21(d) of the Exchange Act. Defendant shall
19 satisfy this obligation by paying \$62,263.36 within ten business days to the Clerk of this Court,
20 together with a cover letter identifying Douglas S. Newton as a defendant in this action; setting forth
21 the title and civil action number of this action and the name of this Court; and specifying that
22 payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit
23 photocopies of such payment and letter to the Commission's counsel in this action. By making this
24 payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no
25 part of the funds shall be returned to Defendant. Defendant shall pay post-judgment interest on any
26 delinquent amounts pursuant to 28 USC § 1961.
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1 The Clerk shall deposit the funds into an interest bearing account with the Court Registry
2 Investment System ("CRIS") or any other type of interest bearing account that is utilized by the
3 Court. These funds, together with any interest and income earned thereon (collectively, the "Fund"),
4 shall be held in the interest bearing account until further order of the Court. In accordance with 28
5 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States
6 Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on
7 the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall
8 not exceed that authorized by the Judicial Conference of the United States.
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10 The Commission may by motion propose a plan to distribute the Fund subject to the Court's
11 approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund
12 provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such
13 Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this
14 Judgment shall be treated as penalties paid to the government for all purposes, including all tax
15 purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or
16 reduction of any award of compensatory damages in any Related Investor Action based on
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18 Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he further
19 benefit by, offset or reduction of such compensatory damages award by the amount of any part of
20 Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related
21 Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final
22 order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount
23 of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs.
24 Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change
25 the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related
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1 Investor Action" means a private damages action brought against Defendant by or on behalf of one or
2 more investors based on substantially the same facts as alleged in the Complaint in this action.

3 VI.

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent
5 is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant
6 shall comply with all of the undertakings and agreements set forth therein.
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8 VII.

9 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
10 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.
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12 VIII.

13 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil
14 Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

15 Dated: 8/10/07

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17 UNITED STATES DISTRICT JUDGE